

SENATE FLOOR SUBSTITUTE FOR
SENATE BILL 624

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CHILDREN; AMENDING A PROVISION OF THE CHILDREN'S
CODE TO CLARIFY TERMINATION OF PARENTAL RIGHTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-4-29 NMSA 1978 (being Laws 1993,
Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE. --

A. A motion to terminate parental rights may be
filed at any stage of the abuse or neglect proceeding. The
proceeding may be initiated by any of the following:

- (1) the department;
- (2) a licensed child placement agency; or
- (3) any other person having a legitimate
interest in the matter, including the child's guardian ad
litem, a petitioner for adoption, a foster parent or a relative

1 of the child.

2 B. The motion for termination of parental rights
3 shall be signed, verified by the moving party and filed with
4 the court. The motion shall set forth:

5 (1) the date, place of birth and marital
6 status of the child, if known;

7 (2) the grounds for termination and the facts
8 and circumstances supporting the grounds for termination;

9 (3) the names and addresses of the persons or
10 authorized agency or agency officer to whom custody might be
11 transferred;

12 (4) whether the child resides or has resided
13 with a foster parent who desires to adopt this child;

14 (5) whether the motion is in contemplation of
15 adoption;

16 (6) the relationship or legitimate interest of
17 the moving party to the child; and

18 (7) whether the child is subject to the
19 federal Indian Child Welfare Act of 1978 and, if so:

20 (a) the tribal affiliations of the
21 child's parents;

22 (b) the specific actions taken by the
23 moving party to notify the parents' tribes and the results of
24 the contacts, including the names, addresses, titles and
25 telephone numbers of the persons contacted. Copies of any

1 correspondence with the tribes shall be attached as exhibits to
2 the petition; and

3 (c) what specific efforts were made to
4 comply with the placement preferences set forth in the federal
5 Indian Child Welfare Act of 1978 or the placement preferences
6 of the appropriate Indian tribes.

7 C. A parent who has not previously been a party to
8 the proceeding shall be named in the motion and shall become a
9 party to the proceeding unless the court determines that the
10 parent has not established a protected liberty interest in his
11 relationship with the child.

12 D. Notice of the filing of the motion, accompanied
13 by a copy of the motion, shall be served by the moving party on
14 all other parties, the foster parent, preadoptive parent or
15 relative providing care for the child with whom the child is
16 residing, foster parents with whom the child has resided for
17 six months within the previous twelve months, the custodian of
18 the child, any person appointed to represent any party and any
19 other person the court orders. Service shall be in accordance
20 with the Rules of Civil Procedure for the District Courts for
21 the service of motions in a civil action in this state, except
22 that foster parents and attorneys of record in this proceeding
23 shall be served by certified mail. The notice shall state
24 specifically that the person served shall file a written
25 response to the motion within twenty days if the person intends

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1 to contest the termination. In any case involving a child
2 subject to the federal Indian Child Welfare Act of 1978, notice
3 shall also be sent by certified mail to the tribes of the
4 child's parents and upon any "Indian custodian" as that term is
5 defined in 25 U.S.C. Section 1903(6). Further notice shall not
6 be required on a parent who has been provided notice previously
7 pursuant to Section 32A-4-17 NMSA 1978 and who failed to make
8 an appearance.

9 E. If the identity or whereabouts of a person
10 entitled to service are unknown, the moving party shall file a
11 motion for an order granting service by publication supported
12 by the affidavit of the moving party or his agent or attorney
13 detailing the efforts made to locate the person entitled to
14 service. Upon being satisfied that reasonable efforts to
15 locate the person entitled to service have been made and that
16 information as to the identity or whereabouts of the person is
17 still insufficient to effect service in accordance with the
18 Rules of Civil Procedure for the District Courts, the court
19 shall order service by publication pursuant to the Rules of
20 Civil Procedure for the District Courts.

21 F. After a motion for the termination of parental
22 rights is filed, the parent shall be advised of the right to
23 counsel unless the parent is already represented by counsel.
24 Counsel shall be appointed, upon request, for any parent who is
25 unable to obtain counsel due to financial reasons or, if in the

1 court's discretion, the interests of justice require
2 appointment of counsel.

3 G. The court shall assure that a guardian ad litem
4 represents the child in all proceedings for the termination of
5 parental rights.

6 H. When a motion to terminate parental rights is
7 filed, the moving party shall request a hearing on the motion.
8 The hearing date shall be at least thirty days, but no more
9 than sixty days, after service is effected upon the parties
10 entitled to service under this section.

11 I. In any action for the termination of parental
12 rights brought by a party other than the department and
13 involving a child in the custody of the department, the
14 department may:

15 (1) litigate a motion for the termination of
16 parental rights that was initially filed by another party; or

17 (2) move that the motion for the termination
18 of parental rights be found premature and denied.

19 J. When a motion to terminate parental rights is
20 filed, the department shall perform concurrent planning.

21 K. When a child has been in [~~the custody of the~~
22 ~~department~~] foster care for not less than fifteen of the
23 previous twenty-two months, the department shall file a motion
24 to terminate parental rights, unless:

25 (1) a parent has made substantial progress

1 toward eliminating the problem that caused the child's
2 placement in foster care; it is likely that the child will be
3 able to safely return to the parent's home within three months;
4 and the child's return to the parent's home will be in the
5 child's best interests;

6 (2) the child has a close and positive
7 relationship with a parent and a permanent plan that does not
8 include termination of parental rights will provide the most
9 secure and appropriate placement for the child;

10 (3) the child is thirteen years of age or
11 older, is firmly opposed to termination of parental rights and
12 is likely to disrupt an attempt to place him with an adoptive
13 family;

14 (4) a parent is terminally ill, but in
15 remission, and does not want his parental rights to be
16 terminated; provided that the parent has designated a guardian
17 for his child;

18 (5) the child is not capable of functioning if
19 placed in a family setting. In such a case, the court shall
20 reevaluate the status of the child every ninety days unless
21 there is a final court determination that the child cannot be
22 placed in a family setting;

23 (6) grounds do not exist for termination of
24 parental rights;

25 (7) the child is an unaccompanied, refugee

1 minor and the situation regarding the child involves
 2 international legal issues or compelling foreign policy issues;
 3 or

4 (8) adoption is not an appropriate plan for
 5 the child.

6 L. For purposes of this section, a child shall be
 7 considered to have entered foster care on the earlier of:

8 (1) the date of the first judicial finding
 9 that the child has been abused or neglected; or

10 (2) the date that is sixty days after the date
 11 on which the child was removed from the home.

12 [~~L.~~] M. The grounds for any attempted termination
 13 shall be proved by clear and convincing evidence. In any
 14 proceeding involving a child subject to the federal Indian
 15 Child Welfare Act of 1978, the grounds for any attempted
 16 termination shall be proved beyond a reasonable doubt and shall
 17 meet the requirements set forth in 25 U.S.C. Section 1912(f).

18 [~~M.~~] N. When the court terminates parental rights,
 19 it shall appoint a custodian for the child and fix
 20 responsibility for the child's support.

21 [~~N.~~] O. In any termination proceeding involving a
 22 child subject to the federal Indian Child Welfare Act of 1978,
 23 the court shall in any termination order make specific findings
 24 that the requirements of that act have been met.

25 [~~O.~~] P. A judgment of the court terminating

1 parental rights divests the parent of all legal rights and
2 privileges and dispenses with both the necessity for the
3 consent to or receipt of notice of any subsequent adoption
4 proceeding concerning the child. A judgment of the court
5 terminating parental rights shall not affect the child's rights
6 of inheritance from and through the child's biological
7 parents. "